IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6105 of 1994

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAVJIBHAI HARIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6105 of 1994

MR BJ JADEJA for Petitioner No. 1

NOTICE SERVED for Respondent No. 1-3

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 01/10/2004

ORAL JUDGEMENT

As very short and interesting question, which has come to the surface in this petition, under Article 227

of the Constitution of India, is as to whether a parcel of agricultural land, given in "Bhoodan Yagna Movement and Mechanism" and then allotted to a needy person by the "Bhoodan Yagna Committee" for Saurashtra Area in exercise of powers under Section 13 of "Saurashtra Bhoodan Yagna Act", 1953 (Act), only with rights and liabilities of an occupant, could be transferred, assigned or disposed of by him to any third party with monetary consideration, could be said to be legal or not?

2. The special land bearing Survey No.342, admeasuring 3 acres and 27 gunthas, situated in village Khodu in Wadhwan Taluka, Dist.Surendranagar, was granted to the father of the respondent no.3, one Banesang Bhavsang in 'Bhoodan' in 1959 by the "Bhoodan Yagna Committee" in terms of Section 13 of the Act. Upon the death of the father of respondent no.3, the said 'Bhoodan' land was mutated in the name of respondent no.3 and he, thereafter, transferred by a registered Sale Deed dated 5/5/81 to the petitioner for consideration of Rs.15,000/- on the ground that he was in need of money and he did not know that the permission of the Collector for such transfer was requisite.

3. The Deputy Collector of the said District passed an order in April 1993 in Case No.4/86-87, confiscating the land along with another land, bearing Survey No.343 admeasuring 9 acres and 26 gunthas. Being aggrieved by the said order, the petitioner challenged it by filing Land Appeal No.66/92-93 before the Collector, who partly allowed the Appeal and confirmed the order of confiscation land bearing Survey No.342. The order of confiscating the land bearing Survey No.343 was quashed and set aside as it was not in subject matter of the notice issued by the Deputy Collector.

4. The petitioner, again, challenged the said order of the Collector dated 13/9/1993 by filing Revision Application No.15/93 before Special Secretary, Revenue Department (Appeals). The petitioner, in the Revision Application was unsuccessful which was decided on 1/2/1994, against which the petitioner has filed writ petition by invoking Article 227 of the Constitution of India.

5. The learned Advocates appearing for the parties are heard extensively. This Court has given anxious thoughts and considerations to the factual, as well as, legal proposition involved in it.

6. In an inquiry, the concerned Deputy Collector, by

his order dated 12th April, 1993 directed the confiscation of the said parcel of the "Agricultural Bhoodan Land" on the ground that there was a breach of the terms and conditions on which the occupancy rights to the original holder only had been given as "Bhoodan Land" under the relevant provisions of Section 13 of the Act, and it being a "new tenure land", transfer of the same was not permissible without prior approval of the Competent Authority. There is no dispute about the fact that the father of the respondent no.2 came to be allotted the disputed agricultural land under the "Bhoodan Yagna Scheme" by the Competent Committee in terms of the provisions of Section 13 of the Act. It was a new tenure land and the original allottee was only granted cultivation right as an occupant. Three forums below have considered the dispute which is reiterated before this Court in this petition.

7. It would be relevant at this stage to consider and examine the statutory or legislative frame of the Saurashtra Bhoodan Yagna Act, 1953 (Act No.XXXIV of 1953), which was designed to facilitate the donation and settlement of land in connection with the Bhoodan Yagna initiated by Shree Acharya Vinoba Bhave and to provide for the settling of such lands on the landless persons in the State of Saurashtra. "Bhoodan Yagna" means the movement initiated by Shri Acharya Vinoba Bhave for acquisition of land through voluntary gifts with a view to distribute it to landless persons.

8. In the said Act, there is a provisions of establishment and incorporation of the "Bhoodan Yagna Committee" having perpetual succession and common seal with a capacity of suing and being sued in its corporate name, of acquiring, holding, administering and transferring property, both moveable and immoveable and of entering into contracts. Section 4 of the Act provides for the Constitution of the Committee, whereas, Section 5 provides for Dissolution of Committee, to which we are not concerned, at this stage, for the purpose of consideration of the dispute reiterated again in this Revision. Section 8 of the Act provides for the Donation of the Land to the "Bhoodan Yagna". A person who is holding the land may donate and grant such land to the "Bhoodan Yagna" by a declaration in writing in that behalf in the manner prescribed and such a "Bhoodan" declaration shall be filed with the Revenue Officer, as soon as, it is made, whereas in Section 9, provisions are made for Publication and Investigation upon the petitioner with regard to the land. Section 10 pertains to filing, hearing and disposal of objections after the

declaration, whereas Section 11 provides for land which cannot be donated.

9. The relevant and important provisions, insofar as the merits of this petition are concerned, are contained in Sections 13 and 14. Section 13 prescribes and empowers the Committee for the grant of land to the landless persons, out of the Bhoodan Land. Section 14 of the Act provides that all grounds under Section 13 shall be made as far as possible in accordance with the Scheme of Bhoodan Yagna. The Rule-making powers are incorporated in Section 16 of the Act. This is, in nutshell, the entire statutory frame evoked in the said Act.

10. Upon analytical appraisal of the factual profile, coupled with relevant legal settings and the rival contentions, this Court has no hesitation in finding from the entire statutory mechanism of the Act, the purpose of grant of land by the "Bhoodan Yagna Committee" as per the "Bhoodan Yagna Scheme" and as per the provisions of Section 13, the grantee gets only limited right for self-cultivation and, therefore, he has no right to sell such "Bhoodan Yagna" land without the prior permission of the Competent Authority. So the acquisition of the right of grant of such Bhoodan land to landless persons in respect of such land only will be of rights and liabilities of an occupant. Obviously, therefore, the grantee has no right to transfer such land and that too with consideration. The terms and conditions of the grant are, also, specifically very clear. Undoubtedly, in this case, the sale transaction by a registered deed with a consideration of Rs.15,000/- made by the son of the original grantee of the Bhoodan Yagna land to the petitioner is contrary to the terms and conditions of the grant and the provisions of Sections 13 and 14 of the Act. It is in this context, the order of the Dy.Secretary, Revenue Department (Appeals) of State of Gujarat recorded on 1/2/1994, in exercise of the powers under Section 211 of the Bombay Land Revenue Code, 1879, cannot be said to be unjust, unreasonable and required to be interfered with in exercise of writ jurisdiction, more so when Article 227 of the Constitution relates to supervisory jurisdiction of the High Court and the jurisdictional sweep, thereunder, is very much circumscribed to a very narrow circumference.

11. In the result, the petition on hand is meritless and is required to be dismissed. However, in view of the following aspects it will be open for the petitioner to approach the Competent Authority for regularisation on

payment of requisite fees or premium or whatever the nomenclature attached to that, in terms of relevant provisions and rules and the powers of the Competent Authority in that behalf.

12. This Court from the peculiar facts and special circumstances emerging from the record of the present case feels that when the question of land is in occupation since 1959 and thereafter the purchaser, who is the petitioner in this petition, approached the said land from the son of the original allottee by a registered Sale Deed dated 5/5/81 for the consideration of Rs.15,000/- and there is no dispute. Thereafter, the petitioner has also invested substantial amount of money for making it fertile, useful agricultural land. Upon such an application being made within reasonable period of time by the petitioner to the Competent Authority in writing for regularisation, highlighting all these aspects, which are enumerated before this Court and emerging from the record, also, it will be open for the Competent Authority to consider such an application on merits in accordance with the prevalent rule and statutory provisions upon permissible and leviable amount by way of fees or premium etc.

13. In the result, petition shall stand dismissed with the aforesaid observations leaving parties to bear their own costs. Rule discharged. Ad-interim relief granted earlier also stands vacated.

(DR.J.N.Bhatt, J.)

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